

STATE OF MICHIGAN
COURT OF APPEALS

MONA DAHER,

Plaintiff-Appellant,

v

FARM BUREAU INSURANCE, a/k/a FARM
BUREAU GENERAL INSURANCE COMPANY
OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED

April 24, 2007

No. 274629

Wayne Circuit Court

LC No. 06-601526-NZ

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and her husband owned a home that was destroyed by fire. Investigators determined that the fire had been deliberately set. Plaintiff's husband was apparently a suspect, but was never charged. Defendant nevertheless denied his claim under the policy. Defendant paid \$168,800 to the mortgagee. Defendant moved for summary disposition, arguing that it was only liable to plaintiff for one-half the value of the house and could set off the amount paid to satisfy the mortgage balance against her remaining losses. Because there was no evidence that her total losses exceeded the sum paid against the mortgage, it was entitled to judgment. The trial court agreed and granted defendant's motion.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Questions of law are also reviewed de novo on appeal. *Minority Earth Movers, Inc v Walter Toebe Constr Co*, 251 Mich App 87, 91; 649 NW2d 397 (2002).

Defendant denied plaintiff's husband's claim for benefits, asserting that he was responsible for the fire and otherwise involved in fraud that voided his coverage under the policy. If defendant can prove wrongdoing on the part of plaintiff's husband, plaintiff's recovery would be limited to one-half the actual damages up to the policy limits. *Brown v Frankenmuth Mut Ins Co*, 187 Mich App 375, 382; 468 NW2d 243 (1991); *Ramon v Farm Bureau Ins Co*, 184 Mich App 54, 65-66; 457 NW2d 90 (1990); *Lewis v Homeowners Ins Co*, 172 Mich App 443,

449; 432 NW2d 334 (1988). Because defendant failed to present any evidence to prove that plaintiff's husband was actually involved in any wrongdoing, we find that an issue of fact remains concerning the amount of proceeds to which plaintiff is entitled. Further, defendant would be entitled to a setoff, up to the actual value of the loss to the mortgaged property, for the payment made to the mortgagee. *Brown, supra* at 383-384; *Ramon, supra* at 66-67; *Marketos v American Employers Ins Co*, 240 Mich App 684, 695-697; 612 NW2d 848 (2000), rev'd in part on other grounds 465 Mich 407 (2001). Because the evidence presented did not establish the actual value of the losses occasioned by the fire, the court could not properly determine the extent of defendant's setoff or whether plaintiff's share of the proceeds (be it one hundred percent or fifty percent) minus the setoff is greater than zero. Therefore, genuine issues of fact remained for trial and the trial court erred in granting defendant's motion for judgment.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Stephen L. Borrello